

<b>TO:</b>  <b>Commissioner of Patents</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following **Patents**

DOCKET NO. <b>11-cv-1127</b>	DATE FILED <b>4/27/11</b>	U.S. DISTRICT COURT <b>FOR THE DISTRICT OF COLORADO</b>
PLAINTIFF Tru-Balance, LLC		DEFENDANT Alcoa, Inc.
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 <b>7,178,880</b>		<b>Please see copy of Complaint attached hereto</b>
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK <b>GREGORY C. LANGHAM</b>	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

Civil Action No.

TRU-BALANCE, LLC, a Colorado limited liability company,

Plaintiff,

v.

ALCOA, INC., a Pennsylvania corporation,

Defendant.

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**COMPLAINT AND JURY DEMAND**

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COMES NOW the Plaintiff, Tru-Balance, LLC, a Colorado limited liability company, by and through its undersigned counsel, Erik G. Fischer of the law firm of Erik G. Fischer, P.C. and William W. Cochran of the law firm of Cochran Freund & Young LLC, and for its Complaint against Defendant, Alcoa, Inc., a Pennsylvania corporation, states and alleges as follows:

**JURISDICTION AND VENUE**

1. Plaintiff, Tru-Balance, LLC, is a Colorado limited liability company with its principal office at 671 Academy Court, Unit A, Windsor, Weld County, CO 80550.
2. Defendant, Alcoa, Inc., is a Pennsylvania corporation with its principal office at, upon information and belief, 390 Park Avenue, New York, NY 10022.
3. This is a patent infringement action pursuant to 35 U.S.C. § 271. Thus, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1338(a), 28 U.S.C. § 1331, and 28 U.S.C. § 1332.

4. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400 in that Alcoa, Inc., through its agents, subsidiaries, and affiliates has, upon formation and belief, conducted business in the State and District of Colorado and has committed acts of contributory infringement and infringement inducing conduct in the State and District of Colorado relating to a patent owned by Tru-Balance, LLC.

#### **GENERAL ALLEGATIONS**

5. Tru-Balance, LLC (herein "Tru-Balance") is the exclusive licensee of, and has the exclusive right to bring suits under, Patent No. US 7,178,880 (herein "Tru-Balance's '880 Patent"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, which patent was issued to inventor James H. Andersen on February 20, 2007, and thereafter licensed by the inventor to Tru-Balance.

6. Tru-Balance's '880 Patent consists of wheel centering pin device which is threaded, in sets of three in circumferential spacing, on to the hub bolts of the wheel on a heavy truck. The use of Tru-Balance's patent-protected wheel centering pins results in a heavy truck wheel being mounted more nearly on the center of the wheel hub and eliminates irregular tire wear and vibration and minimizes the danger of accidents, injuries and damages resulting from lost wheels.

7. In about February 2010, Alcoa, Inc., through its "Wheel & Transportation Products Division" (herein "Alcoa"), began to manufacture, market, and distribute an infringing version of Tru-Balance's patent-protected wheel centering pin device. Alcoa called this infringing product the "Alcoa Wheel Mounting Tool (P/N 000426)" and marketed it to, among others, several of Tru-Balance's then-current customers, including customers in the State of Colorado.

8. Alcoa, having been notified by Tru-Balance of its infringing product by correspondence and communications from Tru-Balance, is fully aware that its Alcoa Wheel Mounting Tool (P/N 000426) infringes on Tru-Balance's '880 Patent.

9. Nevertheless, despite having been put on notice of its infringing product, Alcoa continues to make, distribute, advertise, market and sell its Alcoa Wheel Mounting Tool (P/N 000426) infringing product.

10. Alcoa's acts of marketing, distributing, and other infringing acts have occurred throughout the United States and specifically in the State of Colorado.

#### **FIRST CLAIM FOR RELIEF**

##### **(Inducement to Infringe Tru-Balance's '880 Patent)**

11. Tru-Balance realleges and incorporates herein by reference all prior allegations.

12. The acts and conduct of Alcoa in continuing to manufacture, advertise, promote, distribute, and sell the Alcoa Wheel Mounting Tool (P/N 000426) constitute inducement to infringe Tru-Balance's '880 Patent in violation of 35 U.S.C. § 271(b), as a result of which Alcoa is liable as an infringer.

13. The notice by Tru-Balance to Alcoa that it is infringing Tru-Balance's '880 Patent and Tru-Balance's patent-protected wheel centering pin device, and Alcoa's failure, after notice, to refrain from such infringement, justifies the award of treble damages against Alcoa pursuant to 35 U.S.C. § 284.

14. As a direct and proximate result of the inducement to infringe by Alcoa of Tru-Balance's '880 Patent, Tru-Balance has suffered injuries and damages in an amount or amounts to be ascertained at trial, but not less than \$75,000.00.

WHEREFORE, Tru-Balance pleads as aforesaid.

## **SECOND CLAIM FOR RELIEF**

### **(Contributory Infringement of Tru-Balance's '880 Patent – All Defendants)**

15. Tru-Balance realleges and incorporates herein by reference all prior allegations.

16. The acts and conduct of Alcoa in continuing to manufacture, advertise, promote, distribute, and sell the Alcoa Wheel Mounting Tool (P/N 000426) constitute contributory infringement of Tru-Balance's '880 Patent in violation of 35 U.S.C. § 271(c) as a result of which Alcoa is liable as an infringer.

17. The notice to Alcoa that it is infringing Tru-Balance's '880 Patent and Alcoa's failure, after notice, to refrain from such infringement justifies the award of treble damages against Alcoa pursuant to 35 U.S.C. § 284.

18. As a direct and proximate result of the infringement by Alcoa, Tru-Balance has suffered injuries and damages in an amount or amounts to be ascertained at trial, but not less than \$75,000.00.

WHEREFORE, Tru-Balance pleads as aforesaid.

## **THIRD CLAIM FOR RELIEF**

### **(Unfair Competition)**

19. Tru-Balance realleges and incorporates herein by reference all prior allegations.

20. Tru-Balance has invested substantial time, energy and resources in developing, marketing, and selling products covered by Tru-Balance's '880 Patent.

21. By the above mentioned activities, Defendant has misappropriated Tru-Balance's efforts and such are being improperly used by Alcoa to compete with Tru-Balance in the United States.

22. Alcoa has usurped Tru-Balance's competitive advantage and interfered with the operation of Tru-Balance's legitimate business.

23. Alcoa's conduct and activities constitute unfair competition against Tru-Balance.

24. Alcoa's conduct and activities have damages Tru-Balance in an amount to be determined at trial which is in excess of \$75,000.00 and, unless enjoined, will seriously impair the value of Tru-Balance's business.

WHEREFORE, Tru-Balance pleads as aforesaid.

**PRAYER FOR RELIEF**

WHEREFORE, Tru-Balance prays for judgment against Alcoa as follows:

- A. For a judgment that Tru-Balance's '880 Patent has been infringed by Alcoa in violation of 35 U.S.C. § 271;
- B. For an order of an accounting of all of sales, profits, cost of goods sold, and other relevant financial information concerning the production, marketing, and sale of the Alcoa Wheel Mounting Tool (P/N 000426) which product infringes on Tru-Balance's '880 Patent;
- C. For an award of damages pursuant to 35 U.S.C. § 284 in an amount not less than a reasonable royalty and/or lost profits for the use made of Tru-Balance's '880 Patent by Alcoa which is adequate to compensate Tru-Balance for the inducement to infringe and/or contributory infringement;
- D. For treble damages pursuant to 35 U.S.C. § 284 for the willful, intentional, and deliberate character of the inducement to infringe and/or contributory infringement by Alcoa of Tru-Balance's '880 Patent and Tru-Balance's patent-protected wheel centering pin device;

- E. For Tru-Balance's reasonable attorney's fees pursuant to 35 U.S.C. § 285 or as otherwise provided by law and for costs of suit, including expert witness fees; and
- F. For such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Tru-Balance demands trial by jury on all issues so triable.

Dated this 27th day of April, 2011.



s/ Erik G. Fischer

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